LEGISLATIVE

RESEARCH COMMISSION

WATERSHED PROTECTION

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REPORT TO THE
1989 GENERAL ASSEMBLY
OF NORTH CAROLINA
1989 SESSION

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STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

December 14, 1988

TO THE MEMBERS OF THE 1989 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on watershed protection. The report was prepared by the Legislative Research Commission's Committee on Watershed Protection pursuant to Section 2.1(47D) of Chapter 873 of the 1987 Session Laws.

Respectfully submitted,

Liston B. Ramsey

V.J. (Monk) Harrington

Cochairmen
Legislative Research Commission

1987-1988

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

Speaker of the House of Representatives Liston B. Ramsey, Cochair	President Pro Tempore of the Senate J. J. Harrington, Cochair
Rep. John T. Church	Senator Henson P. Barnes
Rep. Bruce Ethridge	Senator A. D. Guy
Rep. Aaron Fussell	Senator R. L. Martin
Rep. Vernon James	Senator James Richardson
Rep. Josephus Mavretic	Senator Lura Tally

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1987 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120 30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of watershed protection was authorized by Section 2.1(47D) of Chapter 873 of the 1987 Session Laws (1987 Session). That act states that the Commission may consider House Bill 1203 in determining the nature, scope and aspects of the study. Section 3 of House Bill 1203 reads in part: "The Commission shall study the need for standards applicable to development within watersheds including whether such standards are needed on other than a local basis. The Commission shall investigate the need for controls on the amount of impervious surface allowed in developments in watersheds. The Commission may also examine other controls which may be useful in controlling what substances enter water supplies and in maintaining the quality of such

supplies. In particular, the Commission shall address the issue of whether protection of watersheds requires State imposed minimum standards or whether such protection may be achieved solely on the basis of local regulation." The relevant portions of Chapter 873 and House Bill 1203 are included in Appendix A. The Legislative Research Commission grouped this study in its water quality area under the direction of Representative Bruce Ethridge. The Committee was chaired by Senator Kenneth C. Royall, Jr. and Representative Aaron E. Fussell. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Watershed Protection Legislative Study Committee met four times. At its first meeting, the Committee heard presentations from the Department of Natural Resources and Community Development and the Department of Human Resources outlining the current water classification schemes and standards that exist for watershed protection. The Committee also heard presentations concerning regional and local protections for watersheds. Additional comments were addressed to the Committee by Mr. Clay Hamner who summarized for the Committee some of the concerns that developers have about watershed protection and the standards adopted to achieve that goal.

At the second meeting, the Committee considered suggestions and proposals for Statewide standards to protect watersheds. Addressing the Committee on this issue were the Department of Human Resources, the Department of Natural Resources and Community Development, the Sierra Club, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and the Durham City-County Planning Division.

At the third meeting, the Committee considered draft legislation directing the Environmental Management Commission to develop and adopt State standards for the protection of watersheds. Additional proposals for watershed protection from the League of Municipalities and the Department of Natural Resources and Community Development were also considered. During its discussion of the various proposals, members agreed that State standards should be adopted to protect watersheds that are deemed water supplies and that stricter standards may be needed for watersheds designated as critical water supplies. The Committee further stated that local jurisdictions should retain the option of adopting standards more stringent than those of the State if so desired.

The issue of the appropriate relationship between State and local jurisdictions in protecting watersheds was also addressed. The Committee indicated that the administration and enforcement of the watershed protection program adopted by the Environmental Management Commission could be delegated to local jurisdictions, and voted to adopt a policy statement submitted by the League of Municipalities acknowledging the water supply watershed protection program to be a cooperative effort between State and local governments. The Committee also voted to adopt a proposal from the League of Municipalities that a watershed protection advisory council be established to assist with the development of criteria, standards, rules, regulations, and other appropriate matters for the protection of watersheds.

A second draft of legislation directing the Department of Natural Resources and Community Development and the Department of Human Resources to develop a State water supply plan was also reviewed by the Committee. Members approved the substance of the draft but requested that the draft be revised as a codified statute rather than a session law.

The Committee counsel was instructed to incorporate the changes adopted by the Committee in the legislative proposals and submit the revised drafts to the Committee for approval at its next meeting.

At its fourth meeting, the Committee recommended the attached bills entitled AN ACT TO AUTHORIZE AND DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP AND ADOPT RULES ESTABLISHING MINIMUM STATE STANDARDS, LIMITATIONS, AND MANAGEMENT PRACTICES FOR THE PROTECTION OF WATER SUPPLY WATERSHEDS and AN ACT TO DEVELOP A STATE WATER SUPPLY PLAN, and adopted this report.

BACKGROUND

Safeguarding the State's drinking water supplies is an environmental issue of increasing importance in North Carolina. Traditionally an issue governed by local concern, protection of watersheds at the State level is limited.

Reservoirs are classified by the Health Services Commission as Class I, Class II, or Class III. (G.S. 130A-320). Classifications are not indicative of the quality of waters, but are based on the purpose for which the water is to be used. A Class I reservoir is a water supply with an intake. A Class II reservoir is a water supply without an intake but which flows into Class I waters. A Class III designation indicates a multipurpose use such as for a water supply, flood control, and recreational purposes. The only density requirement applicable to any of the reservoir classifications is a 40,000 square foot requirement for lots that have septic tanks. This restriction is applicable only to Class I and II reservoirs.

The Environmental Management Commission classifies all surface water supplies as WS-I, WS-II, or WS-III. (G.S. 143-214.1). The classes are defined according to the amount and types of permitted point source discharges and a requirement to control nonpoint sources of pollution. The chart below indicates the density requirements and allowable wastewater discharges for each classification.

Class	Density Requirements	Wastewater Discharges
WS-I	low development	none allowed
WS-II	moderate development	only domestic and non-process industrial (However not allowed adjacent to the intake)

WS-III	no restriction	no categorical restriction

As the table indicates, only WS-I and WS-II classifications have mandatory density requirements and discharge restrictions. At the present time 26 watersheds are classified as WS-I. There are no WS-II classifications. All other surface water supplies are classified WS-III and thus are subject to no restrictions or standards.

Classification of water supplies under this system is voluntary. Reclassification of a water supply to secure the more stringent standards and protections depends upon local initiative. To obtain a higher classification for its water supply, a local government must adopt ordinances and land use control programs. In return, the State may reclassify the water supply and regulate point source discharges.

The Environmental Management Commission is also considering a Critical Water Supply Watershed Program that would have mandatory ordinances for WS-I and WS-II watersheds with multiple jurisdictions and for protected areas around WS-III intakes. The protected area for each WS-III intake would be determined on a case-by-case basis by the Environmental Management Commission after a public hearing. However, this program has not been implemented by the Department of Natural Resources and Community Development and no criteria exist for designating a critical water supply watershed.

Regional and local ordinances and programs for watershed protection often vary. Land use plans, zoning ordinances, subdivision regulations, density regulations, soil erosion and sedimentation control ordinances are among the controls used most often by local jurisdictions to protect water supplies.

FINDINGS

In its study the Committee focused on two major issues: whether a need exists for State minimum standards to protect water supply watersheds, and whether a State water planning program should be developed to project the water use of local jurisdictions and identify present and future watersheds.

In considering the first issue the Committee found that the protection of water supplies has generally been left to the discretion of local jurisdictions. Few State standards exist and those that do are limited and apply only to certain classes of reservoirs. The Environmental Management Commission has developed guidelines for obtaining a protective surface water classification but implementation of the guidelines is voluntary and dependant upon local governmental initiative. While a partnership of State and local governments is desirable, conflicts may arise when watersheds cross local jurisdictional boundaries and upstream neighbors are expected to take the initiative to implement programs and practices that may be costly and benefit only downstream locales. In addition few local governments have the technical expertise to develop the standards needed.

The Committee found that State minimum standards should be adopted for the protection of watersheds that are water supplies. In addition the Committee found that some water supply watersheds may be critical water sources requiring protective standards more stringent than those adopted to protect other water supply watersheds. The Committee determined that the identification and classification of watersheds that are water supply sources and those that are critical water supply sources is the responsibility of the Environmental Management Commission. The Committee further determined that the development of appropriate standards to protect water supply

watersheds is also the responsibility of the Environmental Management Commission. The Committee found that the Environmental Management Commission should exercise its powers to develop and adopt State minimum standards for the protection of water supply watersheds and that the administration and enforcement of such standards should be delegable to local governments that wanted to assume that responsibility. The Committee found that the standards for the protection of water supply watersheds should include point and nonpoint source pollution controls, but that the State should continue to administer point source pollution controls while the local jurisdictions should focus on nonpoint source pollution controls. Thus, the Committee found that State limitations and management practices should be included in rules adopted by the Environmental Management Commission to protect water supply watersheds.

All those addressing comments to the Committee indicated support of Statewide minimum standards for the protection of watersheds and a local option to adopt more stringent standards if desired. Models suggested to the Committee in its consideration of minimum standards included the Coastal Area Management Act and the Guidelines for Obtaining a Protective Surface Water Classification developed by the Department of Natural Resources and Community Development. The relative merits of lower density controls over engineered and structural controls should also be considered in developing protective standards.

In its consideration of the second issue, the Committee found that the continuing growth of population in this State and its urbanization make the projected use of water and identification of potential water supplies crucial. Water use and supply plans drawn up at the local level and submitted for review by the State will enable the State to identify potential problems at an early date and to target areas that have technical assistance needs. The water use and supply plans could be made mandatory for all local jurisdictions or, as an alternative, those areas with the most serious water

problems could be addressed first, gradually incorporating all jurisdictions into a Statewide scheme.

RECOMMENDATIONS

1. The Committee recommends that the Environmental Management Commission adopt rules establishing minimum standards, limitations, and management practices for the protection of water supply watersheds as proposed by Legislative Proposal 1.

2. The Committee recommends that a State water supply plan be developed by the Department of Natural Resources & Community Development and the Department of Human Resources as proposed by Legislative Proposal 2.

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 873
HOUSE BILL 1

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO AMEND STATUTORY LAW.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Study Commissions and Committees Act of 1987."

. . .

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1987 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

(1) Continuation of the Study of Revenue Laws (H.J.R. 13-Lilley).
(2) Acquired Immune Deficiency Syndrome--AIDS (H.J.R. 72 Jones).
(3) Applied Design School Feasibility (H.J.R. 118-Easterling).
(4) Continuation of the Study on the Problems of the Aging (H.J.R. 156-Edwards; S.R.J. 54-Hunt,W.).
(5) Continuation of Study of State Personnel System (H.J.R. 247-Stamey; S.J.R. 178-Hunt, W.).
(6) Farmland Preservation Techniques and Policy (H.J.R. 355-Beall).
(7) Day Care (H.J.R. 595-Colton; S.J.R. 360-Tally).

(8) State Schools for Hearing- and Sight-Impaired Children (H.J.R. 811-Jeralds).
(9) Modern Family (H.J.R. 964-Perdue).
(10) Types of High School Diplomas (H.J.R. 981-Chalk).
(11) Corporate Income Taxation (H.B. 999-Mothershead).
(12) Tourism's Growth and Effect (H.J.R. 1010-Perdue; S.B. 1328-Barker).
(13) Economic Development and Recruiting (H.B. 1097-Hightower).
(14) Control of Development around Small Public Water Supply Reservoirs (H.J.R. 1103-Hackney).
(15) Public School Teacher Career Development Pilot Program (H.B. 1183-McLaughlin).
(16) Unruly Students (H.B. 1221-Brawley).
(17) State Permitting of Septic Tank Systems (H.J.R. 1238-Redwine).
(18) Continuation of Study of Coastal Water Quality (H.B.1252-Stamey).
(19) Historic Preservation (H.J.R. 1257-Colton; S.J.R. 874-Walker).
(20) Military Justice Code for National Guard (H.B. 1265-Alexander).
(21) Need for a State Department of Housing (H.J.R. 1303-Fitch).
(22) Money Market Funds Treatment under the Intangibles Tax (H.B. 1344-Lineberry).
(23) Campaign and Election Procedures (H.B. 1533-Crawford,N.).
(24) State Buildings' Maintenance (H.B. 1606-Crawford,N.; S.B. 1012-Goldston).
(25) Pest Control (H.B. 1752-Holt).
(26) Attorney General's Staff (H.J.R. 1818-Anderson; S.J.R. 1157-Marvin).
(27) State Government Leasing of Office Space (H.J.R. 1819-Anderson; S.J.R. 1085-Marvin).
(28) Animal Welfare Act (H.B. 1850-Stamey).
(29) Housing Discrimination (H.B. 1965-Barnes).
(30) Sports Laws (H.B. 2093-Miller).
(31) Outdoor Drama Funding (H.B. 2107-Holt).
(32) Disadvantaged Business Contracts Financed by State Funds (H.B. 2130-Hardaway).
(33) State Contracts with Small Businesses (H.B. 2131-Hardaway).
(34) Continuation of Interest Rate Regulation Study (S.B. 203-Johnson, J.).
(35) Wellness Program for State Employees (S.J.R. 357-Sherron).
(36) Low-level Radioactive Waste Management (S.B. 359-Tally).
(37) Solid Waste Management (S.J.R. 362-Speed).
(38) Safe Roads Act Study (S.B. 509-Harris).
(39) Inactive Hazardous Sites Protection (S.B. 517-Smith).
(40) Interbasin Water Transfer (S.J.R. 855-Hardison).
(41) Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes (S.J.R. 856-Harris).
(42) Ombudsman Study (S.B. 857-Harris).
(43) Tax Collector Sell Auto Tags Study (S.B. 877-Swain).

(44) Emergency Care Volunteers Network (S.J.R. 880-Sherron),
(45) DHR Liability Insurance (S.B. 1009-Ward),
(46) State Publications' Need, Function, Effectiveness and Distribution (S.B. 1119-Martin,R.),
(47) Viability of Inland Waters and Severance Tax on Phosphate Rock Mining (S.B. 1167-Thomas),
(47A) Hunter's Safety/Wildlife Study,
(47B) The Acquisition of Abandoned Railroad Rights of Way or Easements by the State of N.C.,
(47C) Child Support Enforcement,
(47D) Watershed Protection (H.B. 1203-Fussell),
(47E) Automobile Insurance (H.B. 2159-Beard),
(47F) Interstate Banking (H.B. 1924-Diamont),
(48) Ferries (S.B. 1174-Basnight), and
(49) Oregon Inlet Navigation, Dredging and Stabilization (S.B. 1176-Basnight).

Sec. 2.2. Farm Issues (H.B. 1055-Locks). The Legislative Research Commission is authorized to study issues related to the preservation of farmers and farming, including the following issues:

(1) Whether there should be a mechanism for the mediation of farm debts;
(2) Whether the owner of agricultural land that has been sold pursuant to execution or foreclosure should have a right of first refusal in the sale or lease of the land;
(3) Whether the owner of agricultural land that has been sold pursuant to execution or foreclosure should have a right to partially redeem the land;
(4) Whether there should be additional State regulation to limit health hazards facing farmers;
(5) Whether there should be further legal protection for contract farmers;
(6) How additional public support can be generated for alternatives to traditional farm enterprises such as producing tobacco, corn, and soybeans;
(7) Which of the following approaches will lead to the preservation of farmland:
  (a) Existing and proposed national, state, and local programs,
  (b) Voluntary agricultural districting,
  (c) Purchase and transfer of development rights,
  (d) Conservancy work, and
  (e) County planning;
(8) The fiscal impact of public capital investments on farm and county finances.

Sec. 2.3. Veterans Preference in State Employment (H.B. 1133-Cunningham). The Legislative Research Commission may study the advisability of strengthening the preference to be accorded veterans in State employment.

Sec. 2.4. Gerontology (H.B. 384-Nye). The Legislative Research Commission may study the issue of gerontology as it relates to economics, health-related matters, independent living, and long-term care.

Sec. 2.5. Leaking Underground Storage Tanks (H.B. 1304-Wicker). The Legislative Research Commission may study issues relating

to underground storage tanks, including liability and compensation for environmental damage resulting from leaking tanks.

Sec. 2.5A. Parental Leave (H.B. 965 - Kennedy). The Legislative Research Commission may study all aspects of granting parental leave in employment.

Sec. 2.6. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation to the 1989 General Assembly.

Sec. 2.7. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

. . .

-----EFFECTIVE DATE

Sec. 31. This act is effective on July 1, 1987.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

H 2

HOUSE BILL 1203
Committee Substitute Favorable 5/20/87

Short Title: Watershed Study Commission. (Public)

Sponsors:

Referred to: Water and Air Resources.

May 4, 1987

A BILL TO BE ENTITLED

AN ACT TO CREATE THE WATERSHED STUDY COMMISSION.

Whereas, an abundant supply of clean water has always been a part of every North Carolinian's heritage; and

Whereas, the increasing industrialization of the State, the increasing population of the State and intensified farming practices now present a great challenge to the continued maintenance of the State's water supply; and

Whereas, watersheds of impoundment reservoirs and rivers cross the boundaries of many local governments thereby creating great difficulty in securing a minimum uniform level of quality control for the State's waters; and

Whereas, it appears that one answer to the problem of water quality may be the use of a statewide watershed management and control program; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Watershed Study Commission is created. The Commission shall consist of 12 members: four Senators appointed by the President of the Senate; four Representatives appointed by the Speaker of the House; and four nonlegislator members, two appointed by the President of the

Senate and two appointed by the Speaker of the House. All initial appointments shall be made by August 1, 1987. Vacancies on the Commission shall be filled in the same manner as initial appointments.

Sec. 2. The President shall designate one Senator as cochairman and the Speaker shall designate one Representative as cochairman. The cochairmen shall call the initial meeting of the Commission.

Sec. 3. The Commission shall study the need for standards applicable to development within watersheds including whether such standards are needed on other than a local basis. The Commission shall investigate the need for controls on the amount of impervious surface allowed in developments in watersheds. The Commission may also examine other controls which may be useful in controlling what substances enter water supplies and in maintaining the quality of such supplies. In particular, the Commission shall address the issue of whether protection of watersheds requires State imposed minimum standards or whether such protection may be achieved solely on the basis of local regulation.

Sec. 4. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1989 Session of the General Assembly by filing the report with the President of the Senate and the Speaker of the House of Representatives. The Commission may report to the 1988 Session of the 1987 General Assembly. Upon filing its final report, the Commission shall terminate.

Sec. 5. Upon the approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of House and Senate supervisors of clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building, upon the approval of the Legislative Services Commission.

Sec. 6. Members of the Commission shall be paid subsistence and travel allowances as follows:

(1) Commission members who are also General Assembly members at the rate established in G.S. 120-3.1;

(2) Commission members who are also officials or employees of the State at the rate established in G.S. 138-6;

(3) All other Commission members at the rate established in G.S. 138-5.

Sec. 7. There is appropriated from the General Fund to the Legislative Services Commission for fiscal year 1987-88 the sum of twenty-five thousand dollars ($25,000) to fund the Commission created by this Part.

Sec. 8. This act is effective upon ratification.

APPENDIX B

MEMBERSHIP OF LRC COMMITTEE ON WATERSHED PROTECTION

Pres. Pro Tem's Appointments

Sen. Kenneth C. Royall, Jr., Cochair
Post Office Box 8766
Durham, NC 27707
(919) 489-9191

Mr. Dempsey E. Benton, Jr.
City Manager, City of Raleigh
Post Office Box 590
Raleigh, NC 27602
(919) 890-3070

Mr. Don Cordell
Hazen and Sawyer
Post Office Box 30428
Raleigh, NC 27622
(919) 782-8333

Ms. Barrie Wallace
Phoenix Communications
Bright Leaf Square
905 West Main Street
Durham, NC 27701
(919) 683-1777

Sen. Ralph A. Hunt
433 Pilot Street
Durham, NC 27707
(919) 688-4889

Speaker's Appointments

Rep. Aaron E. Fussell, Cochair
1201 Briar Patch Lane
Raleigh, NC 27615
(919) 876-0240

Rep. W. Pete Cunningham
3121 Valleywood Place
Charlotte, NC 28216
(704) 394-0919

Rep. C. R. Edwards
302 Moore Street
Fayetteville, NC 28301
(919) 483-6505

Rep. Joe Hackney
Box 1329
Chapel Hill, NC 27514
(919) 929-0323

Rep. Thomas C. Hardaway
Post Office Box 155
Enfield, NC 27823
(919) 445-2371

Staff: Ms. Emily Johnson
Legislative Services Office
(919) 733-6660

Clerk: Ms. Martha Dixon
(919) 733-9608 (O)
(919) 787-1363 (H)

LRC Member: Rep. Bruce Ethridge

APPENDIX C

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

Legislative Proposal 1

S D

89-lh-19

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Watershed Protection Rules. (Public)

Sponsors: Representative Fussell.
Senator Royall.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AND DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP AND ADOPT RULES ESTABLISHING MINIMUM STATE STANDARDS, LIMITATIONS, AND MANAGEMENT PRACTICES FOR THE PROTECTION OF WATER SUPPLY WATERSHEDS.

The General Assembly of North Carolina enacts:

Section 1. Article 21 of Chapter 143 is amended by adding a new section to read:

"§ 143-214.5. Water supply watershed protection.--(a) Policy Statement. This section establishes a cooperative program of water supply watershed protection and management between local and State governments. Local governments shall be responsible for land use planning under guidelines,

criteria, and standards provided by State government. With regard to planning, State government shall act primarily in a supportive standard-setting and review capacity, except where local governments do not carry out their responsibilities to enforce the minimum standards, limitations, and management practices that are developed. Enforcement shall be primarily a local responsibility.

(b) Development and Adoption of Classifications and Standards. The Commission is authorized and directed to develop and adopt by rule a series of classifications for water supply watersheds and the minimum standards, limitations, and management practices applicable to each classification to protect water supply watersheds. The Commission may classify water supply watersheds to designate those or portions thereof that are critical water supply watersheds and shall adopt standards, limitations, and management practices for critical water supply watersheds that are more stringent than those applicable to other water supply watersheds. Water supply watershed classifications and the applicable standards, limitations, and management practices shall be developed by the Commission no later than October 1, 1989. The rules adopted by the Commission for the classification of water supply watersheds and the standards, limitations, and management practices to protect water supply watersheds shall apply throughout the State, from the time of their adoption.

(c) Assignment of Classifications to Identified Water Supply Watersheds. The Commission shall identify each water supply watershed in the State and shall assign to it the appropriate classification with the applicable minimum standards, limitations, and management practices to protect the water supply watershed no later than January 1, 1990.

(d) Local Administration and Enforcement of Standards. The administration and enforcement of rules adopted by the Commission establishing standards, limitations, and management practices for the protection of water supply watersheds may be delegated to local governments as follows. A local government may adopt regulations consistent with or more stringent than those of the State to protect a water supply watershed within its jurisdiction for the control and abatement of water pollution in compliance with the State's policy in G.S. 143-211. If the administration and enforcement of such rules is

delegated to a local government, the local enforcement procedures shall be used and the enforcement provisions of G.S. 143-215.6 shall not apply.

Within 120 days after the adoption by the Commission of water supply watershed protection rules and the assignment of water supply watershed classifications, each local government within a water supply watershed that wishes to adopt its own land use plans, implementing ordinances, and enforcement procedures for the protection of a water supply watershed within its jurisdiction in lieu of those adopted by the State shall submit to the Commission a written statement of its intent to adopt such local plans and ordinances. The local government shall complete the preparation and adoption of its land-use plan, implementing ordinances, and enforcement procedures for water supply watershed protection within 480 days after the adoption and assignment of State water supply watershed classifications and applicable standards, limitations, and management practices and submit those local regulations to the Commission for review. The Commission shall review local land-use plans, implementing ordinances, and enforcement procedures for compliance with this section and water supply watershed protection rules adopted by the Commission and shall approve them only if consistent with or more stringent than the State water supply watershed protection rules. Upon approval of the local regulations by the Commission, the local regulations adopted by the local government requesting review shall supersede the State rules for the protection of water supply watersheds in that local jurisdiction on a date specified by the Commission.

If a local government requests review of local watershed protection regulations that were in effect prior to the adoption of State rules for the protection of water supply watersheds and those local regulations are approved by the Commission as being consistent with or more stringent than State water supply watershed rules, the local government may request and the Commission may specify that the local regulations supersede State rules effective on the date the local regulations were originally adopted by the local government. If the Commission finds any local regulation inconsistent with the State rules for water supply watershed protection, the Commission shall transmit recommendations for modification to the adopting local government. Unless a local government adopts local regulations for water supply watershed protection that meet the approval of the Commission, the State rules for water

supply watershed protection shall apply as provided in subsection (b) of this section."

Sec. 2. Article 21 of Chapter 143 is amended by adding a new section to read:

"**§ 143-214.6. Watershed Protection Advisory Council.** --(a) Creation. There is created the Watershed Protection Advisory Council.

(b) Membership. The Council shall consist of not more than eighteen members appointed or designated as follows:

(1) One individual appointed by the Secretary of Natural Resources and Community Development from among the employees of the Department;

(2) The Secretary of Commerce or his designee;

(3) The Secretary of Administration or his designee;

(4) The Secretary of Transportation or his designee;

(5) The Secretary of Human Resources or his designee, and one additional member selected by him from his department;

(6) The Commissioner of Agriculture or his designee;

(7) One member each from four different lead regional organizations to be appointed by the Commission from nominations submitted by lead regional organizations;

(8) Two representatives from county government, one to be appointed by the President Pro Tempore of the Senate and one to be appointed by the Speaker of the House of Representatives from a list of six nominees submitted by the North Carolina Association of County Commissioners;

(10) Two representatives of municipal government, one to be appointed by the President Pro Tempore of the Senate and one to be appointed by the Speaker of the House of Representatives from among six nominees submitted by the North Carolina League of Municipalities;

(11) Two members selected by the Commission who have technical or professional expertise in the areas of water resources or land use planning; and

(12) One member who is a local health director selected by the Commission upon recommendations of the Secretary of Human Resources.

(c) Functions and Duties. The Advisory Council shall assist the Secretary of Natural Resources and Community Development and the Commission in an advisory capacity:

(1) On development of necessary water supply watershed protection criteria, standards, rules, and regulations, and

(2) On such other water supply watershed protection matters as the Council or Secretary consider appropriate.

(d) Multiple Offices. Membership on the Council is an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) Chairman and Vice Chairman. A chairman and vice chairman shall be elected annually by the Council from its membership.

(f) Compensation. The members of the Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5."

Sec. 3. G.S. 143-213(16) reads as rewritten:

"(16) The term 'standard' or 'standards' means such measure or measures of the quality of water and air as are established by the Commission pursuant to G.S. ~~143-214.1~~ 143-214.1, G.S. 143-214.5, and G.S. 143-215."

Sec. 4. G.S. 143-215.2(a) reads as rewritten:

"(a) Issuance. -- The Commission is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to ~~G.S. 143-214.1~~ G.S. 143-214.1, G.S. 143-214.5, or G.S. 143-215, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water and such document shall have the same force and effect as a special order of the Commission issued pursuant to hearing. Provided, however, that the provisions of this section shall not apply to any agricultural operation, such as the use or preparation of any land for the

purposes of planting, growing, or harvesting plants, crops, trees or other agricultural products, or raising livestock or poultry."

Sec. 5. G.S. 143-215.6 reads as rewritten:

"**§ 143-215.6. Enforcement procedures.**--(a) Civil Penalties. --

(1) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Commission against any person who:

a. Violates any classification, standard, limitation or management practice established pursuant to G.S. 143-214.1, 143-214.2, 143-214.5, or 143-215.

b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or G.S. 143-355(k) relating to water use information.

e. Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.

f. Violates a rule of the Commission implementing this Part or G.S. 143-355(k).

(2) If any action or failure to act for which a penalty may be assessed under this subsection is continuous, the Commission may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues.

(3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4) The Commission may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to

the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Commission may specify, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Commission, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment.

(b) Criminal Penalties. --

(1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-214.1, 143-214.2, 143-214.5, or 143-215; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or any rule of the Commission implementing any of the said sections, shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or a rule implementing this Article, or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or regulations of the Commission implementing this Article, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000), or by imprisonment not to exceed six months, or by both.

(3) Any person convicted of an offense under either subdivision (1) or subdivision (2) of this subsection following a previous conviction under such subdivision shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of imprisonment provided in the subdivision under which the second or subsequent conviction occurs.

(4) For purposes of this subsection, the term 'person' shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the

people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(c) Injunctive Relief. -- Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part, the Department may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Part. For purposes of this subsection references to 'this Part' include G.S. 143-355(k) relating to water use information."

Sec. 6. This act is effective upon ratification.

LEGISLATIVE ANALYSIS OF

A BILL TO BE ENTITLED AN ACT TO AUTHORIZE AND DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP AND ADOPT RULES ESTABLISHING MINIMUM STATE STANDARDS, LIMITATIONS, AND MANAGEMENT PRACTICES FOR THE PROTECTION OF WATER SUPPLY WATERSHEDS.

Legislative Proposal I mandates the development and adoption of minimum protective measures at the State level for the protection of watersheds that are deemed water supplies by the Environmental Management Commission.

Section 1 of the proposal adds a new section to Chapter 143 of the General Statutes. That section provides that the protection of water supply watersheds is a shared responsibility of State and local governments with the State setting minimum standards and protective measures to be administered and enforced when possible at the local level.

The statute authorizes the Environmental Management Commission to develop a classification series for watersheds that are water supplies and directs the Commission to adopt by rule standards and other protective measures, including limitations and management practices to protect these watersheds. The statute also authorizes the Environmental Management Commission to identify watersheds or portions of watersheds that it considers to be critical water sources and to adopt stricter standards and protective measures for those watersheds or portions thereof than for other watersheds. Water supply watershed classifications, standards, and protective measures are to be developed by October 1, 1989, and the assignment of appropriate classifications to watersheds is to be completed by January 1, 1990.

Watershed classifications, standards, and protective measures are applicable Statewide from the time of their adoption.

Subsection (d) of the statute provides for local administration and enforcement of the State rules. The statute provides a time frame within which local governments may notify the Environmental Management Commission that the local government intends to adopt its own local regulations in lieu of State standards and measures for the protection of watersheds. Local regulations are then submitted to the Commission for review to determine whether they are in compliance with State rules on watershed protection. If approved by the Commission, the local regulations supersede the State rules in that area. The statute further provides that, if the the administration and enforcement of such rules is delegated to a local government, the local enforcement procedures shall be used and the enforcement provisions of G.S. 143-215.6 shall not apply. If not approved, the State rules continue to apply.

Finally, the statute clearly states that local governments may adopt regulations more stringent than those at the State level.

Section 2 of the proposal creates a watershed protection advisory council. There are 18 members and the manner of their selection is listed in the statute. This Council serves in an advisory capacity to the Department of Natural Resources and Community Development and the Environmental Management Commission.

Section 3 of the proposal amends G.S. 143-213(16) to include the standards adopted by the Environmental Management Commission under G.S. 143-214.5 for the protection of water supply watersheds in the definition of the term "standard" or "standards" as it applies throughout Part 1 of Article 21 of Chapter 143 of the General Statutes.

Section 4 of the proposal amends G.S. 143-215.2(a) to include the new watershed protection rules adopted under G.S. 143-214.5 among those for which a special order may be issued, modified or revoked to a person who causes or contributes to the pollution of State waters within an area for which standards have been established.

Section 5 of the proposal amends G.S. 143-215.6, the current enforcement statute, to provide for civil and criminal penalties against a person who violates any of the classifications, standards, limitations or management practices adopted under G.S. 143-214.5. Injunctive relief is also available under G.S. 143-215.6.

The term "person" is defined to include individuals, firms, partnerships, associations, institutions, corporations, municipalities, and other political subdivisions, and governmental agencies. The term also includes any responsible corporate or public officer or employee. However, sanctions are not available under G.S. 215.6 against an elected or appointed official or employee if the lack of compliance with State rules and policy is based on a referendum vote.

Section 6 provides that the bill is effective upon ratification.

APPENDIX D
GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989
Legislative Proposal 2

S D

89-lh-20
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: State Water Plan. (Public)

Sponsors: Senator Royall.
Representative Fussell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO DEVELOP A STATE WATER SUPPLY PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-355 is amended by adding a new subsection to read:

"(l) State Water Supply Plan. -- The Department of Natural Resources and Community Development and the Department of Human Resources shall develop a State water supply plan. The plan may require local jurisdictions to submit local water plans to the Department of Natural Resources and Community Development and the Department of Human Resources indicating the projected population of the area, the projected water use, present and future water supplies, and technical assistance needed to address potential water needs."

Sec. 2. Article 10 of Chapter 130A of the General Statues is amended by adding a new section to read:

"§ 130A-317.1. State Water Supply Plan.-- The Department of Human Resources and the Department of Natural Resources and Community Development shall develop a State water supply plan. The plan may require

local jurisdictions to submit local water plans to the Department of Human Resources and the Department of Natural Resources and Community Development indicating the projected population of the area, the projected water use, present and future water supplies, and technical assistance needed to address potential water needs."

Sec. 3. This act is effective upon ratification. The Department of Natural Resources and Community Development and the Department of Human Resources shall report by October 1, 1989, to the Joint Legislative Commission on Governmental Operations on their progress implementing the provisions of this act.

LEGISLATIVE ANALYSIS OF

A BILL TO BE ENTITLED AN ACT TO DEVELOP A STATE WATER SUPPLY PLAN.

Legislative Proposal 2 mandates development of a State water supply plan. Section 1 of the proposal adds a new subsection to G.S. 143-355 which directs the Department of Natural Resources and Community Development and the Department of Human Resources to develop a State water supply plan. The subsection provides that local jurisdictions may be required to develop local water plans for review by the State and lists information to be included in local plans.

Section 2 adds an identical section to Article 10 of Chapter 130A of the General Statutes.

Section 3 provides that the legislation is effective upon ratification and requires that a progress report on the development of a State water plan be made to Governmental Operations by October 1, 1989.